

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 32 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HIRALAL SAGALCHAND THAKKAR

Appearance:

MR SAMIR DAVE APP for Petitioners
MR DK ACHARYA for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/01/2001

ORAL JUDGEMENT

#. Heard learned counsel for the parties and perused the judgment of the learned Sessions Judge, Banaskantha at Palanpur dated 13.10.1998. The learned Sessions Judge has not committed any error in allowing the appeal filed

by the respondents and quashing and setting aside the order of the Collector, Banaskantha in the matter of the confiscation of the essential commodities and the truck.

#. The facts of the case are that on 15.10.1997 on Deesa Tharad road, near village Chitroda, Supply Inspector had inspected Truck No.GRW-1189 and therein he found sugar, rice, sugar-candy, jaggery, mustard-seed oil worth Rs.29,356/=. It is found that the said goods were purchased from different traders of the village Deesa by Hiralal Sagalchand Thakkar. It is stated that there is a prohibition to carry these articles out of the State. The bills of the sugar are in the name of seven persons of village Daiyap and this sugar is loaded in the truck with intention to take it to Rajasthan State. On investigation those 7 persons in whose name the sugar was purchased were not found residing at the village. Similar case is made for the rice bags. It is alleged that the bills of the purchase of mustard-seed oil was not there.

#. From the facts of this case, I find it to be a case of small quantity of essential commodities. Learned Sessions Judge is correct in his approach to hold that the respondents filed the affidavit of the purchasers and bills of the commodities before the Collector, Banaskantha but this material evidence has not been considered. The Collector, Banaskantha has relied upon the statement of the Supply Inspector. Leaving apart the fact that they may or may not be interested persons in the matter but it is a rule of natural justice and fair-play that the evidence produced by the respondent No.2 it has to be considered by the Collector, Banaskantha before passing the order of confiscation of the essential commodities and the truck. Leaving apart the question whether the corroboration to the evidence of the Supply Inspector is required or not but each piece of evidence produced by the respondent No.2 has to be considered and thereafter the decision is to be given. Where the respondent No.2 has produced the evidence in form of affidavit and bills whether it is to be accepted or not is not a question here but the same has to be considered and after appreciation thereof the Collector, Banaskantha is to decide the matter. It is not in dispute that the evidence produced in the form of affidavits and bills by the respondents has not been considered by the Collector, Banaskantha. The respondents produced sufficient evidence to show and establish that the goods confiscated were to be consumed within the limit of Banaskantha District. Possibly that after considering this evidence of the respondents, the

Collector's decision may be different than what it has been given.

#. The learned Sessions Judge is not incorrect in his approach that even it is taken that these goods to be taken to Rajasthan State still the offence is not completed as there was merely an apprehension of carrying thereof to that State. This truck was intercepted by Supply Inspector within the territory of State of Gujarat. I find force in the contention of learned counsel for the petitioner that the learned Sessions Judge should have remanded the matter to the Collector, Banaskantha for decision after considering the evidence produced by the respondents. This course should have been followed by the learned Sessions Judge where the grievance has been made by the party that evidence produced has not been considered to remand the matter with the direction to the authority concerned to decide the same afresh after considering the evidence of the party concerned. The learned Sessions Judge being the court of appeal could have undertaken this exercise and after considering this evidence of the respondents the matter could have been decided by itself. Looking to the quantity of the essential commodities in issue and this time gap, I do not consider it to be a fit case to remand it to the Collector, Banaskantha. The learned Sessions Judge after considering material produced by both the parties has recorded a finding of facts and I do not find any illegality or perversity therein which calls for the interference of this court in this matter.

In the result, this Special Criminal Application fails and the same is dismissed. Rule is discharged. No order as to costs.

(S.K.Keshote, J.)

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